

Louis M. Marlin, Esq. [SBN 54053]
louis.marlin@marlinsaltzman.com
Marcus J. Bradley, Esq. [SBN 174156]
mbradley@marlinsaltzman.com
Stephen P. O'Dell, Esq. [SBN 132279]
sodell@marlinsaltzman.com
MARLIN & SALTZMAN, LLP
3200 El Camino Real, Suite 100
Irvine, California 92602
(714) 669-4900 Fax: (714) 669-4750

Attorneys for Plaintiff, SEAN S. SIMONYAN
and the Proposed Class

Princeton H. Kim (SBN 217629)
pkim@reedsmith.com
REED SMITH LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071-1514
(213) 457-8000 Fax: (213) 457-8080

Catherine S. Ryan (PA78603) (pro hac vice)
cryan@reedsmith.com
Patrick W. Ritchey (PA19924) (pro hac vice)
pritchey@reedsmith.com
REED SMITH LLP
225 Fifth Avenue, Suite 1200
Pittsburgh, PA 15222
(412) 288-3132 Fax: (412) 288-3063

Attorneys for Defendants
COUNTRYWIDE BANK FSB,
COUNTRYWIDE FINANCIAL
CORPORATION and
BANK OF AMERICA, N.A.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DISTRICT

SEAN S. SIMONYAN, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

COUNTRYWIDE FINANCIAL
CORPORATION, a California
Corporation, et al., and DOES 1
through 100, inclusive,

Defendants.

**CASE NO: CV10-2455 AHM
(VBKx)**

CLASS ACTION

**PROTECTIVE ORDER BASED
UPON JOINT STIPULATION**

Complaint Filed: January 29, 2010
Removed: April 5, 2010

1 This stipulated protective order is entered into by and between plaintiff Sean S.
2 Simonyan (“Plaintiff”) and defendants Countrywide Bank FSB, Countrywide
3 Financial Corporation, and Bank of America, N.A. (collective “Defendants”), by and
4 through their respective counsel of record, to govern the production and disclosure of
5 confidential documents and information in this action.

6 1. GOOD CAUSE STATEMENT

7 Disclosure and discovery in this action will likely involve the production of
8 private and personal information of Plaintiff and/or the putative class members,
9 including, but not limited to, information related to their identity, compensation,
10 employment, personnel records, contact information, and other materials, which
11 Plaintiff and/or the putative class members may contend are protected by their rights
12 to privacy under the United States and California Constitutions. In addition to the
13 production of such personal and private information, Defendants will likely produce
14 confidential and proprietary information, including trade secret information, as that
15 term is defined by the United Trade Secret Act and/or California Civil Code section
16 3426.1, relating to its corporate structure, strategic planning, clients, compensation
17 plans, benefits, and operations. Defendants contend that the public disclosure of the
18 foregoing information, which is confidential and not available other similarly situated
19 companies, will cause them prejudice or irreparable injury, thereby damaging their
20 competitive position in the marketplace.

21 Accordingly, the parties hereby stipulate to believing that good cause exists for
22 the entry of this Stipulated Protective Order and request that the Court do so for the
23 purpose of providing special protection from the public disclosure. The parties
24 acknowledge that the Court’s Order does not confer blanket protections to all
25 disclosures or responses to discovery and that the protection it affords from public
26 disclosure and use extends only to the limited information or items that are entitled to
27 confidential treatment under the applicable legal principles. The parties further
28 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order

1 does not entitle them to file confidential information under seal; Civil Local Rule 79-5
2 sets forth the procedures that must be followed and the standards that will be applied
3 when a party seeks permission from the court to file material under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: A Party or Non-Party that challenges the designation
6 of information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: Information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for protection
9 under Federal Rule of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House
11 Counsel (as well as their support staff).

12 2.4 Designating Party: A Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.5 Disclosure or Discovery Material: All items or information, regardless of
16 the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced or
18 generated in disclosures or responses to discovery in this matter.

19 2.6 Expert: A person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
21 expert witness or as a consultant in this action.

22 2.7 In-House Counsel: Attorneys who are employees of a party to this
23 action. In-House Counsel does not include Outside Counsel of Record or any other
24 outside counsel.

25 2.8 Non-Party: Any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.

27 2.9 Outside Counsel of Record: Attorneys who are not employees of a party
28 to this action but are retained to represent or advise a party to this action and have

1 appeared in this action on behalf of that party or are affiliated with a law firm which
2 has appeared on behalf of that party.

3 2.10 Party: Any party to this action, including all of its officers, directors,
4 managerial employees, consultants, retained experts, and Outside Counsel of Record
5 (and their support staffs).

6 2.11 Producing Party: A Party or Non-Party that produces Disclosure or
7 Discovery Material in this action.

8 2.12 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.13 Protected Material: Any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.14 Receiving Party: A Party that receives Disclosure or Discovery Material
15 from a Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only
18 Protected Material (as defined above), but also (1) any information copied or extracted
19 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
20 Protected Material; and (3) any testimony, conversations, or presentations by Parties
21 or their Counsel that might reveal Protected Material. However, the protections
22 conferred by this Stipulation and Order do not cover the following information:
23 (a) any information that is in the public domain at the time of disclosure to a
24 Receiving Party or becomes part of the public domain after its disclosure to a
25 Receiving Party as a result of publication not involving a violation of this Order,
26 including becoming part of the public record through trial or otherwise; and (b) any
27 information known to the Receiving Party prior to the disclosure or obtained by the
28 Receiving Party after the disclosure from a source who obtained the information

1 lawfully and under no obligation of confidentiality to the Designating Party. Any use
2 of Protected Material at trial shall be governed by a separate agreement or order.

3 4. DURATION

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
8 without prejudice; and (2) final judgment herein after the completion and exhaustion
9 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
10 limits for filing any motions or applications for extension of time pursuant to
11 applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or Non-Party that designates information or items for protection under this
15 Order must take care to limit any such designation to specific material that qualifies
16 under the appropriate standards. The Designating Party must designate for protection
17 only those parts of material, documents, items, or oral or written communications that
18 qualify - so that other portions of the material, documents, items, or communications
19 for which protection is not warranted are not swept unjustifiably within the ambit of
20 this Order.

21 If it comes to a Designating Party's attention that information or items that it
22 designated for protection do not qualify for protection, that Designating Party must
23 promptly notify all other Parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in
25 this Order (*see, e.g.,* second paragraph of section 5.2(a) below), or as otherwise
26 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
27 under this Order must be clearly so designated before the material is disclosed or
28 produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic
3 documents, but excluding transcripts of depositions or other pretrial or trial
4 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
5 page that contains protected material.

6 A Party or Non-Party that makes original documents or materials available for
7 inspection need not designate them for protection until after the inspecting Party has
8 indicated which material it would like copied and produced. During the inspection and
9 before the designation, all of the material made available for inspection shall be
10 treated as “CONFIDENTIAL.” After the inspecting Party has identified the
11 documents it wants copied and produced, the Producing Party must determine which
12 documents, or portions thereof, qualify for protection under this Order. Then, before
13 producing the specified documents, the Producing Party must affix the
14 “CONFIDENTIAL” legend to each page that contains Protected Material.

15 (b) for testimony given in deposition or in other pretrial or trial proceedings,
16 that the Designating Party identify the portions of the record that are protected within
17 14 days of receipt of the transcript.

18 (c) for information produced in some form other than documentary and for
19 any other tangible items, that the Producing Party affix in a prominent place on the
20 exterior of the container or containers in which the information or item is stored the
21 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
22 warrant protection, the Producing Party, to the extent practicable, shall identify the
23 protected portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive the
26 Designating Party’s right to secure protection under this Order for such material.
27 Upon timely correction of a designation, the Receiving Party must make reasonable
28

1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality but must do so in a prompt and timely fashion so as to
6 avoid any foreseeable, substantial unfairness, unnecessary economic burdens, or a
7 significant disruption or delay of the litigation.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process by providing written notice of each designation it is challenging
10 and describing the basis for each challenge. To avoid ambiguity as to whether a
11 challenge has been made, the written notice must recite that the challenge to
12 confidentiality is being made in accordance with this specific paragraph of the
13 Protective Order. The parties shall attempt to resolve each challenge in good faith and
14 in a timely fashion. In conferring, the Designating Party must explain the basis for its
15 belief that the confidentiality designation was proper and must give the Challenging
16 Party an opportunity to review the designated material, to reconsider the
17 circumstances, and, to respond to the explanation offered by the Designating Party. A
18 Challenging Party may proceed to the next stage of the challenge process only if it has
19 engaged in this meet and confer process first or establishes that the Designating Party
20 is unwilling to participate in the meet and confer process in a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
22 court intervention, the Challenging Party shall file and serve a motion to determine
23 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
24 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of
25 the parties agreeing that the meet and confer process will not resolve their dispute,
26 whichever is earlier. Each such motion must be accompanied by a competent
27 declaration affirming that the movant has complied with the meet and confer
28 requirements imposed in the preceding paragraph. Failure by the Challenging Party to

1 make such a motion including the required declaration within 21 days (or 14 days, if
2 applicable) shall automatically waive the objection for each challenged designation.

3 6.4 Burden of Proof. The burden of persuasion in any such challenge
4 proceeding shall be on the Designating Party. Frivolous challenges, and those made
5 for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens
6 on other parties) may expose the Challenging Party to sanctions. Unless the
7 Designating Party has waived the confidentiality designation by failing to file a
8 motion to retain confidentiality as described above, all parties shall continue to afford
9 the material in question the level of protection to which it is entitled under the
10 Designating Party's designation until the Court rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this case
14 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
15 Material may be disclosed only to the categories of persons and under the conditions
16 described in this Order. When the litigation has been terminated, a Receiving Party
17 must comply with the provisions of section 13 below relating to final disposition.

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons
20 authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
22 otherwise ordered by the Court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
24 only to:

25 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to
27 disclose the information for this litigation and who have signed the "Acknowledgment
28 and Agreement to Be Bound" that is attached hereto as Exhibit A;

1 (b) the officers, directors, and employees (including In-House Counsel) of
2 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
3 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (d) the Court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, mock
9 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
10 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
11 (Exhibit A);

12 (f) during their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the “Acknowledgment and Agreement to
14 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
15 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
16 reveal Protected Material must be separately bound by the court reporter and may not
17 be disclosed to anyone except as permitted under this Stipulated Protective Order.

18 (g) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
21 PRODUCED IN OTHER LITIGATION

22 If a Party is served with a subpoena or a court order issued in other litigation
23 that compels disclosure of any information or items designated in this action as
24 “CONFIDENTIAL,” that Party must:

25 (a) promptly notify in writing the Designating Party. Such notification shall
26 include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or order to
28 issue in the other litigation that some or all of the material covered by the subpoena or

1 order is subject to this Protective Order. Such notification shall include a copy of this
2 Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
4 the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena or court order shall not produce any information designated in this
7 action as “CONFIDENTIAL” before a determination by the Court from which the
8 subpoena or order issued, unless the Party has obtained the Designating Party’s
9 permission. The Designating Party shall bear the burden and expense of seeking
10 protection in that Court of its confidential material - and nothing in these provisions
11 should be construed as authorizing or encouraging a Receiving Party in this action to
12 disobey a lawful directive from another court.

13 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
14 PRODUCED IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a Non-
16 Party in this action and designated as “CONFIDENTIAL.” Such information
17 produced by Non-Parties in connection with this litigation is protected by the
18 remedies and relief provided by this Order. Nothing in these provisions should be
19 construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party’s confidential information in its possession, and the Party is
22 subject to an agreement with the Non-Party not to produce the Non-Party’s
23 confidential information, then the Party shall:

24 1. promptly notify in writing the Requesting Party and the Non-Party
25 that some or all of the information requested is subject to a confidentiality agreement
26 with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection,

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this Court.

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without prior
4 privilege review.

5 Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach
6 an agreement on the effect of disclosure of a communication or information covered
7 by the attorney-client privilege or work product protection, the parties may
8 incorporate their agreement in the stipulated protective order submitted to the Court.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not file in the public record in this action any Protected Material.
20 A Party that seeks to file under seal any Protected Material must comply with Civil
21 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
22 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
23 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
24 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
25 entitled to protection under the law. If a Receiving Party's request to file Protected
26 Material under seal pursuant to Civil Local Rule 79-5 is denied by the Court, then the
27 Receiving Party may file the information in the public record pursuant to Civil Local
28 Rule 79-5 unless otherwise instructed by the Court.

1 13. FINAL DISPOSITION.

2 Within 60 days after the final disposition of this action, as defined in Section 4,
3 each Receiving Party must return all Protected Material to the Producing Party or
4 destroy such material. As used in this subdivision, “all Protected Material” includes
5 all copies, abstracts, compilations, summaries, and any other format reproducing or
6 capturing any of the Protected Material. Whether the Protected Material is returned or
7 destroyed, the Receiving Party must submit a written certification to the Producing
8 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
9 deadline that (1) identifies (by category, where appropriate) all the Protected Material
10 that was returned or destroyed and (2) affirms that the Receiving Party has not
11 retained any copies, abstracts, compilations, summaries or any other format
12 reproducing or capturing any of the Protected Material. Notwithstanding this
13 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
14 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
15 deposition and trial exhibits, expert reports, attorney work product, and consultant and
16 expert work product, even if such materials contain Protected Material. Any such
17 archival copies that contain or constitute Protected Material remain subject to this
18 Protective Order as set forth in Section 4.

19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of [insert formal name of the case and the number and initials assigned to it by the court].

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint [print or type full name] of [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

ORDER

Based on the Joint Stipulation of the Parties filed concurrently herewith, and good cause appearing, IT IS SO ORDERED.

Dated: May 25, 2011

/s/

Honorable Victor B. Kenton
United States District Court Magistrate Judge